

CANADA     )  
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              )     **IN THE MATTER OF THE *ROYAL CANADIAN MOUNTED***  
                          ***POLICE ACT*, R.S.C., 1985, CHAPTER R-10, AS AMENDED**  
                          **BY 33-34-35, ELIZABETH II, CHAPTER 11**

**BETWEEN:**

**THE APPROPRIATE OFFICER "K" DIVISION**

**and**

**STAFF SERGEANT DONALD RAY, REG. NO. 40873**

**BOARD MEMBERS:**

**Inspector J.R. Knopp, Chair**  
**Superintendent P.A. Dowden, Member**  
**Superintendent C.S. MacMillan, Member**

**APPEARANCES:**

**Constable N. Gagné**  
**For the Appropriate Officer**

**Mr. L. McGonigal**  
**For the Member**

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**DECISION OF THE ADJUDICATION BOARD**  
**PURSUANT TO PART IV OF THE**  
***ROYAL CANADIAN MOUNTED POLICE ACT***

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**Synopsis of the Decision**

Seven allegations of disgraceful conduct were established against the member. Allegations One and Three pertained to the provision and consumption of alcohol in the workplace, Allegation Two also pertained to the provision and consumption of alcohol in the workplace, and included an allegation that he engaged in inappropriate sexual contact with a subordinate by exposing his penis to her. Allegation Four also pertained to the provision and consumption of alcoholic beverages in the workplace, and included an allegation of using the polygraph suite for sexual encounters, and an ensuing affair over a period of twelve months' which involved using an unmarked police vehicle for transport to and from sexual liaisons. Allegation Five pertained to a single sexual encounter in a public place with a subordinate employee. Allegation Six pertained to saying inappropriate comments to, and touching a subordinate employee. Allegation Seven pertained to inappropriate and unprofessional contact with prospective employees and to altering data on a prospective employee's security clearance form. The Board considered both dismissal and a considerable demotion but paid great deference to a joint submission and imposed a sanction consisting of a reprimand, the forfeiture of ten days' pay, a demotion from the rank of Staff Sergeant to Sergeant, a recommendation for transfer, and a recommendation for continued counseling.

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[1] This decision stems from an expedited hearing held by videoconference that began on November 1, 2011 and was adjourned the same day to allow the Board to deliberate on seven allegations of misconduct. The Board's decision on the allegations was released to the parties in electronic format on December 9, 2011. Written submissions on the sanction were received electronically on December 9 and December 28, 2011. This is the Board's written decision in the matter.

[2] The Board granted a preliminary motion, jointly submitted, replacing some of the particulars contained in the Notice of Disciplinary Hearing dated June 9, 2010, with an Agreed Statement of Facts (ASF). Each allegation was read to the member along with the facts jointly agreed to by counsel. Staff Sergeant Ray indicated he understood each of the allegations and admitted them all.

## **ALLEGATIONS AND AGREED STATEMENT OF FACTS**

[3] The Appropriate Officer of "K" Division alleged in a Notice of Disciplinary Hearing dated June 9, 2010, partly amended by way of ASF on November 1, 2011, that Staff Sergeant had contravened the Code of Conduct as follows (*verbatim*):

### **ALLEGATION ONE**

On or between the 1<sup>st</sup> day of January 2009 and the 20<sup>th</sup> day of August, 2009, at or near Edmonton, in the Province of Alberta, you conducted yourself in a disgraceful manner that brings discredit on the Force, contrary to Section 39 of the *Royal Canadian Mounted Police Regulations (1988)*.

### **Agreed Statement of Facts on Allegation One**

1. At all material times you were a member of the Royal Canadian Mounted Police and the NCO i/c of the Behavioural Sciences Unit.
2. You permitted the consumption of alcohol, and engaged in the consumption of alcohol, within the workplace. On one occasion you supplied a bottle of Appleton rum and a twelve or fifteen pack of Budweiser beer and encouraged your subordinates to sit and have a drink. This occurred in the main entrance foyer of the unit.
3. You kept the bottle of rum in your office and on a second occasion you brought out the same bottle of rum when a subordinate indicated a desire to have a drink at the end of the work day.

### **ALLEGATION TWO**

Between the 1<sup>st</sup> day of February 2009 and the 30<sup>th</sup> day of April 2009, at or near St. Albert, in the Province of Alberta, you conducted yourself in a

disgraceful manner that brings discredit on the Force, contrary to Section 39 of the *Royal Canadian Mounted Police Regulations (1988)*.

### **Agreed Statement of Facts on Allegation Two**

1. While being the NCO i/c of the Behavioural Sciences Unit, on one occasion in late March or early April 2009, close to the end of a work day, S/Sgt. Ray supplied a bottle of Appleton rum and a 12- or 15-pack of Budweiser beer at the unit's office and encouraged his subordinates to sit and have a drink. Ms. A., a public servant and one of S/Sgt. Ray's subordinates, had 4 beers within a two hour period.
2. At one point, all the other employees had left and Ms. A. and S/Sgt. Ray were in S/Sgt. Ray's office. S/Sgt. Ray engaged in inappropriate sexual contact with Ms. A.
3. S/Sgt. Ray and Ms. A., kissed. S/Sgt. Ray then engaged in inappropriate sexual contact with Ms. A. S/Sgt. Ray exposed his penis through the opened zipper of his pants and asked Ms. A. to touch it. S/Sgt. Ray then wanted to have sexual intercourse with Ms. A., which she refused. S/Sgt. Ray insisted but Ms. A. maintained her refusal. They then both left the building without further sexual contact.

### **ALLEGATION THREE**

Between the 1<sup>st</sup> day of January 2006 and the 31<sup>st</sup> day of December 2007, at or near Edmonton, in the Province of Alberta, you conducted yourself in a disgraceful manner that brings discredit on the Force, contrary to Section 39 of the *Royal Canadian Mounted Police Regulations (1988)*.

### **Agreed Statement of Facts on Allegation Three**

1. At all material times you were a member of the Royal Canadian Mounted Police and were a polygraph operator in "K" Division.
2. You had a bar fridge in the Polygraph suite at "K" Division Headquarters and stored beverage alcohol in this fridge. You offered beverage alcohol to another employee in the workplace and engaged in the consumption of alcohol within the workplace on several occasions.

### **ALLEGATION FOUR**

Between the 1<sup>st</sup> day of January 2006 and the 31<sup>st</sup> day of December 2007, at or near Edmonton, in the Province of Alberta, you conducted yourself in a disgraceful manner that brings discredit on the Force, contrary to Section 39 of the *Royal Canadian Mounted Police Regulations (1988)*.

### **Agreed Statement of Facts on Allegation Four**

1. S/Sgt. Ray initiated contact with Ms. B., a public servant employed by the RCMP who was a subordinate in rank/position to him however not under his command. S/Sgt. Ray invited employees, including Ms. B., into the polygraph suite at the "K" Division Headquarters at the end of a work day. S/Sgt. Ray offered Ms. B. beer from a fridge that he had in his office and provided her with 3 or 4 beers. After the other employees left, S/Sgt. Ray and Ms. B. engaged in conversation which led to intercourse in the polygraph suite.

2. S/Sgt. Ray then had a relationship of a sexual nature with Ms. B. which lasted approximately 12 months. During this time frame, S/Sgt. Ray used the polygraph suite at "K" Division Headquarters for sexual relations with Ms. B. during lunch breaks and after business hours. On a number of these occasions, alcohol beverages were provided after business hours. S/Sgt. Ray also used for personal purposes an unmarked RCMP vehicle assigned to him in order to travel to places where sexual relations with Ms. B. occurred.

### **ALLEGATION FIVE**

Between the 1<sup>st</sup> day of April 2009 and the 3<sup>rd</sup> day of April 2009, at or near St. Albert, in the Province of Alberta, you conducted yourself in a disgraceful manner that brings discredit on the Force, contrary to Section 39 of the *Royal Canadian Mounted Police Regulations (1988)*.

### **Agreed Statement of Facts on Allegation Five**

1. S/Sgt. Ray attended a celebration for the transfer of a co-worker at O'Maille's pub in St. Albert with employees of the Behavioural Sciences Unit. S/Sgt. Ray remained at the pub with one of his subordinates, Ms. C., a public servant, after the other employees left. S/Sgt. Ray and Ms. C. had a conversation and at one point S/Sgt. Ray told Ms. C. he would like to have sex with her.

2. Ms. C. and S/Sgt. Ray had consumed alcoholic beverages at the pub. S/Sgt. Ray asked Ms. C. for a ride home due to his level of intoxication.

3. Along the way, S/Sgt. Ray asked Ms. C., who was driving, to pull into a parking lot. S/Sgt. Ray then engaged in intercourse with Ms. C. in a public place.

### **ALLEGATION SIX**

Between the 1<sup>st</sup> day of February 2009 and the 31<sup>st</sup> day of August 2009, at or near St. Albert, in the Province of Alberta, you conducted yourself in a disgraceful manner that brings discredit on the Force, contrary to Section 39 of the *Royal Canadian Mounted Police Regulations (1988)*.

### **Agreed Statement of Facts on Allegation Six**

1. While the NCO i/c of the Behavioural Sciences Unit, S/Sgt. Ray engaged in inappropriate and unwelcome sexual comments towards Ms. D., one of his subordinates.
2. S/Sgt. Ray made a comment to Ms. D. to the effect that she was a "hottie" when he learned of her age.
3. On another occasion S/Sgt. Ray put his arm around Ms. D.'s shoulder and she told him she did not like to be touched. S/Sgt. Ray commented in front of other employees that it must then have been hard for Ms. D. and her husband to have children if she does not like to be touched.
4. On another occasion S/Sgt. Ray made a comment to Ms. D. regarding her clothing to the effect that she "must have a really good sex life with her husband or she must be having an affair".

### **ALLEGATION SEVEN**

Between the 8<sup>th</sup> day of June 2009 and the 31<sup>st</sup> day of August 2009, at or near St. Albert, Edmonton and Red Deer, in the Province of Alberta, you conducted yourself in a disgraceful manner that brings discredit on the Force, contrary to Section 39 of the *Royal Canadian Mounted Police Regulations (1988)*.

### **Agreed Statement of Facts on Allegation Seven**

1. S/Sgt. Ray engaged in contact with prospective employees during a public service staffing process which was inappropriate and unprofessional.
2. This included meeting with one prospective employee, Ms. E., in the NCO's Mess and buying her a beer after her security screening interview was cancelled and after he had fingerprinted her. S/Sgt. Ray conducted the security interview with Ms. E. on a later date.
3. This also included taking another prospective employee, Ms. F., for a beer in the community in which she lived after meeting with her for the purposes of fingerprinting and a security screening interview.
4. S/Sgt. Ray also engaged in inappropriate and unprofessional e-mail communication with prospective employees Ms. E., Ms. F., and Ms. G. during their staffing process.
5. S/Sgt. Ray advised Ms. F., for whom he was doing the security clearance, that he would extend the length of time she knew one of her character references

and S/Sgt. Ray amended this length of time in security form TBS-330-60E Ms. F. had completed.

## **SUBMISSIONS ON THE ALLEGATIONS**

[4] The AOR had no submissions, but the MR added context to Allegation Six in terms of the circumstances leading up to Staff Sergeant Ray's having placed his arm around the shoulder of Ms. D. The MR submitted that Staff Sergeant Ray had been asked to give Ms. D. a hug by an employee who had undergone surgery and wanted Staff Sergeant Ray to thank Ms. D. for her efforts in sending a "get well" gift.

[5] The ASF contained a sentence that read "[f]or the purpose of this Adjudication Board hearing we agree to rely exclusively on those facts agreed upon and contained herein". The MR's submissions contained information not included in the ASF. The AOR had no objection to the MR's submissions and agreed to include this additional information in the ASF. The Board went on record to state it would include the information contained in the MR's submissions in the evidence before the Board on the allegations. The position taken by the Board on this evidentiary issue was acceptable to the parties.

## **DECISION ON THE ALLEGATIONS**

[6] The Board followed the test established by the RCMP's External Review Committee (ERC) in deciding whether or not the allegations were established. The Board was satisfied, taking into account the member's admission and the ASF, that the identity of the member and the acts constituting the alleged misconduct were proven on a balance of probabilities for each of the seven allegations. The Board turned its mind to whether or not the acts described in the ASF were disgraceful and brought discredit upon the Force.

[7] The ERC's test requires the Board to find, on a balance of probabilities, that the acts were disgraceful and brought discredit on the Force. It is not determinative that Staff Sergeant Ray admitted his conduct was disgraceful, because the test is not simply a subjective one. This is a question of law that must be determined in its context, and in view of all of the circumstances of the case. The analysis which must be brought to bear upon the acts committed is whether or not a reasonable person with knowledge of all relevant circumstances, including the realities of policing in general, and the RCMP in particular, would find the acts disgraceful and sufficiently related to the employment situation to warrant discipline against the member.

[8] The term "disgraceful" must given its natural and popular meaning, but the acts must also be seen to disgrace the member professionally. Lord Devlin, in the case of *Hughes v. Architects Registration Council of the United Kingdom*, 1957, 2 All E.R. 436, at paragraph 442, observed that "conduct which is not disgraceful for an ordinary man may be disgraceful for a professional man. [T]he ordinary meaning of the word should be applied in relation to the special obligations and duties of a professional man."

[9] The ERC has attributed further meaning to the term “disgraceful” in order to better inform its application to proceedings under Part IV of the *RCMP Act*. For example, in 26 A.D. (2d) 194, the ERC found that conduct is disgraceful if it represents a violation of professional ethics and offends the conscience. In 29 A.D. (2d) 171, the ERC equated disgracefulness with “shameful, dishonourable, or degrading” activities.

### **Allegations One and Three: Consumption of Alcoholic Beverages in the Workplace**

[10] Knowledge of the realities of policing in general, and of the realities of policing in the RCMP in particular, includes concern over the consumption and provision of alcohol in the workplace. Indeed, the RCMP has developed policy that can be interpreted as prohibiting the consumption of any alcoholic beverages in RCMP facilities, other than in areas such as a mess or a lounge, and even then, only when specifically authorized by the Commanding Officer, the Commissioner, or the Commissioner’s delegate (see RCMP Administration Manual, chapter IX.1.5.4., RCMP Messes and Lounges). A breach of RCMP policy was not alleged in the Notice of Disciplinary Hearing, but the Board took notice that such policy exists. A reasonable person can assume any member, let alone a Senior Non-Commissioned Officer (NCO), is aware that the consumption of alcoholic beverages, in the circumstances described in Allegations One and Three of the Notice of Disciplinary Hearing, is contrary to RCMP policy.

[11] The next step in the Board’s analysis was the effect of a breach of policy which, in and of itself, is not *prima facie* disgraceful. This concept was reviewed in the case of *The Appropriate Officer, “K” Division and Constable Dzerdz*, (2009), 5 AD (4th) 21. The ERC’s findings and recommendations in this matter are cited at (2011), 7 AD (4th) 211. At paragraph 35, the Chair of the ERC stated “a policy infraction must reveal a serious compromise of the Force’s values to be disgraceful.”

[12] A reasonable person would agree that the unauthorized consumption of alcoholic beverages in the workplace is inconsistent with the Mission, Vision and Values statement. A reasonable person would find the acts dishonourable because they are a serious compromise of policy. The Board found that the acts described in Allegations One and Three were disgraceful, and brought discredit on the Force. Allegations One and Three were established.

### **Allegation Two: Consumption of Alcoholic Beverages in the Workplace Combined with Sexual Activity**

[13] As described above, the consumption of alcoholic beverages in the circumstances admitted by the member constitutes disgraceful conduct. Allegations One and Three allege this type of misconduct occurred in Edmonton, Alberta, while Allegation Two relates to the same type of misconduct (accompanied by additional misconduct) which took place in St. Albert, Alberta.

[14] The conduct of Staff Sergeant Ray as outlined in Allegation Two is clearly disgraceful, given that, in the workplace, he exposed his penis to Ms. A., asked her to



touch it, and then asked her to engage in sex, which she refused. The Board was of the opinion that a reasonable person would find Staff Sergeant Ray's actions disgraceful.

[15] The occurrence of the misconduct on Force property was a clear nexus to Staff Sergeant Ray's employment situation therefore, the Force has a clear interest in administering discipline. Allegation Two was established.

**Allegation Four: Consumption of Alcoholic Beverages in the Workplace and Misuse of RCMP Resources**

[16] The above analysis with respect to the provision and consumption of alcoholic beverages in the workplace also applied to Allegation Four.

[17] Turning to the sexual encounters in the workplace, it is clearly disgraceful to use RCMP workplace facilities to engage in sexual activities. It is highly disrespectful to employees who legitimately use the polygraph suite in the course of their duties. The use of the polygraph suite for on-site sexual activities, and the use of the unmarked vehicle for transport to and from off-site sexual encounters, are contrary to the interests of the organization and constitute an improper use of governmental property. Allegation Four was established.

**Allegation Five: Sex in a Public Place with a Subordinate Employee**

[18] There were two forms of misconduct alleged in Allegation Five: sex in a public place and consensual sex between a supervisor and a subordinate employee.

[19] In relation to the first aspect, a reasonable person would find an off-duty police officer engaging in sexual intercourse in a private vehicle in a public place to be disgraceful. Although this activity occurred off-duty, the clear nexus to Staff Sergeant Ray's employment situation is that enforcement and preservation of the law is one of the primary responsibilities of the Royal Canadian Mounted Police, which includes provisions of the criminal law relating to public morals and disorderly conduct. Indeed, as noted by Lord Devlin in *Hughes* (at paragraph 442) "...conduct which is not disgraceful for an ordinary man may be disgraceful for a professional man."

[20] In relation to the second aspect, the evidence established that Ms. C., a public servant, was subordinate to Staff Sergeant Ray. The Force can only sanction off-duty conduct when there is a demonstrated nexus to the member's employment situation. The supervisory relationship provided the obvious nexus, so the only question remaining on this particular aspect of Allegation Five, was whether or not it is disgraceful for a supervisor to engage in consensual sex or a romantic relationship with a subordinate, no matter how limited in duration. If it is found to be disgraceful, it must be determined whether or not such misconduct brings discredit upon the RCMP.

[21] While the Force must be vigilant in protecting subordinates from inappropriate conduct by supervisors, it must also balance and respect the privacy and choices of its members and employees relative to normal social relations between supervisors and subordinates. Therefore, the Board sought submissions from counsel on cases such as *The Law Society of Upper Canada v. J.W.C.B.* [2003], CanLII 1747 (Ontario LSHP). This case, which made reference to leading human rights cases on sexual interaction between supervisors and subordinates, cited the 'landmark' decision of *Bell v. Ladas* (1980), 1 C.H.R.R. D/155, wherein, at paragraph 1390, the adjudicator observed:

The prohibition of such conduct is not without its dangers. One must be cautious that the law not inhibit normal social contact between management and employees or normal discussion between management and employees. It is not abnormal, nor should it be prohibited activity for a supervisor to become socially involved with an employee. An invitation to dinner is not an invitation to a complaint. The danger or the evil that is to be avoided is coerced or compelled social contact where the employee's refusal to participate may result in a loss of employment benefits. Such coercion or compulsion may be overt or subtle, but if any feature of employment becomes reasonably dependent on reciprocating a social relationship proffered by a member of management, then the overture becomes a condition of employment and may be considered to be discriminatory. (Emphasis in the original)

[22] In addition to noting *Bell v. Ladas*, the panel in *The Law Society of Upper Canada v. J.W.C.B.* [2003], CanLII 1747, also adverts to Aggarwal's analysis of Bell, where it is indicated:

It is difficult to imagine that by prohibiting sex discrimination, legislatures in Canada had any intention to deny supervisors and the people they supervise in the workplace *normal* social interchanges, flirtation or even intimate sexual conduct. Interpersonal relations and sexual conduct between the supervisor and his subordinate are not prohibited conduct *per se*. (Emphasis in the original)

[23] Force policy does not expressly address consensual sexual or intimate relationships between supervisors and subordinates. This prompted the Board to request submissions on this issue, making reference to cases such as *Gélinas v. Financial Transactions Reports and Analysis Centre of Canada*, [2004], F.C.J. No. 2151 (*FINTRAC*), a wrongful dismissal suit, in which a supervisor was dismissed for failing to disclose an intimate relationship with a subordinate as required by corporate policy. The witnesses for the employer in *FINTRAC* expressly testified that it was not impermissible for a supervisor to have a relationship with an employee, and in finding that failure to disclose in the circumstances did not provide sufficient cause for termination of employment, Justice Tremblay-Lamer stated at paragraph 35 of her decision:

... [T]ermination of employment was not due to the relationship but because as a manager he did not declare the relationship in a timely fashion. Although it was not impermissible for a supervisor to have a relationship with an employee, when a possible conflict of interest was identified, it is important for the employer to be aware of the situation in order to take rapidly the appropriate measures.

[24] Later in that same decision, at paragraphs 54 and 55, Madame Justice Tremblay-Lamer added,

(54) ... the main reason in support of dismissal is the fact that the plaintiff had entered into an intimate relationship with a subordinate from which there resulted a conflict of interest.

(55) Although, under the employment contract and the relevant policies, it was legitimate for FINTRAC to expect that Mr. Gélinas, as a manager, would display integrity, transparency and good judgment in his conduct and that he would disclose any actual or potential conflict of interest in a timely fashion, I am unable to find, either in the employment contract or in the relevant policies, any prohibition on having a romantic involvement with a subordinate.

[25] The Board found the *FINTRAC* case to be useful in its analysis of this very narrow aspect of Allegation Five, and in the final analysis, the Board accepts Madame Justice Tremblay-Lamer's analysis of the law and principles that apply to such situations. As indicated previously, the RCMP is in a similar position to *FINTRAC* in that no express prohibition of these relationships exists. Further, counsel have not directed the Board to any policy or direction that requires the disclosure of such relationships. In effect, the RCMP does not appear to have provided any specific direction to supervisors or subordinates with respect to dealing with sexual or romantic relationships, such as complete or limited proscription, nor has it addressed the reporting of such relationships.

[26] Nevertheless, the Board has looked to the intent of the legislature in drafting section 37 of the *RCMP Act* as well as to the intent of RCMP management in drafting and applying its Mission, Vision and Values, and in so doing, has concluded that supervisor/subordinate relationships of a consensual sexual or romantic nature are of concern. In particular, there is an obligation on a supervisor not only to exercise extreme care in such circumstances, but to disclose them so that issues surrounding real or perceived conflict of interest can be addressed.

[27] Senior management of the Force has many options when it comes to dealing with consensual sexual and romantic relationships in the workplace, including those which occur between supervisors and their subordinates, and clearly this is an area that requires direction for all concerned.

[28] What happens or has happened elsewhere is entirely beyond the control of this Board and beyond the scope of the present case. This Board could only deal with the facts presented before it, and once seized of the matter, its options become very limited. However, the Board wants to be unequivocal and clear that inappropriate harassment, exploitation, intimidation, or coercion by a supervisor of a subordinate in the workplace is never acceptable. The difficulty arises in dealing with situations where the social relationship between the supervisor and subordinate is mutual or consensual.

[29] For the above reasons, Allegation Five was established. Management and employees alike would benefit from clear guidance and direction on the specific issue of consensual sexual or romantic relationships between RCMP supervisors and their subordinates.

### **Allegation Six: Inappropriate Comments to a Subordinate**

[30] The ERC has held that not all of the particulars supporting the allegation need proof, but only those particulars that are essential to the allegation. The Board did not find it disgraceful that Staff Sergeant Ray placed his arm around the shoulder of Ms. D., especially given the additional context provided by the MR in his submissions. The act may have been a bit forward, but in light of all of the circumstances, such an act is not wholly outside the scope of acceptable workplace conduct.

[31] However, also at issue in Allegation Six was whether or not the following three comments made by Staff Sergeant Ray to Ms. D. constituted disgraceful conduct that brought discredit upon the Force:

- calling her a “hottie” when he learned of her age;
- commenting, in front of other employees, that it must have been hard for Ms. D. and her husband to have had children if she did not like to be touched; and
- making remarks concerning her clothing to the effect that “she must have a really good sex life with her husband or she must be having an affair”.

[32] Section 37(g) of the *RCMP Act* obliges every member to act at all times in a courteous, respectful and honourable manner. Staff Sergeant Ray’s comments were of a sexual nature, they offended Ms. D., and were disrespectful. The comments did not promote a healthy and harassment-free workplace. The Force has a clear interest in sanctioning such behaviour, and the Board found Allegation Six to be established.

### **Allegation Seven: Inappropriate and Unprofessional Conduct Towards Prospective Employees**

[33] The Board once again relied upon the ERC’s finding that not all of the particulars supporting the allegation need proof, but only those particulars that are essential to the allegation. Referring to paragraph 4 of the ASF for Allegation Seven, without clear and cogent proof of what was actually communicated by Staff Sergeant Ray in his e-mail with the prospective employees, the Board could not make a finding as to whether or not the conduct was disgraceful. The Board relied on the case of *The Appropriate Officer “F” Division and Constable Reynolds*, (2009), 5 A.D. (4th) 62, to support its reasoning in this regard. The Appropriate Officer of “K” Division obviously felt what Staff Sergeant Ray said was disgraceful, because he alleged as much in the Notice of Disciplinary Hearing. Staff Sergeant Ray also felt what he said was disgraceful, because he admitted the allegation. Both the MR and the AOR agreed. However, none of those factors, were determinative, because the test to be applied is whether or not a reasonable person would find the comments disgraceful. The test is an objective one, not subjective, and no finding can be made without knowing, at least approximately, what was said. Therefore, this portion of Allegation Seven was not established.

[34] The acts described in paragraphs 2 and 3 of the ASF for Allegation Seven are clearly disgraceful, because they compromised the integrity of the RCMP’s hiring

process. The RCMP's hiring process must conform to standards across the Public Service pertaining to fairness and transparency. When managers directly involved in the hiring process take certain prospective employees out for drinks in the middle of that process, it creates an impression that favouritism is being proffered, which is unfair to other prospective employees. This practice reflects poorly on the hiring practices of the RCMP and is inconsistent with the member's duty to perform duties impartially, as required by section 37(c) of the *RCMP Act*.

[35] At paragraph 5 of the ASF for Allegation Seven, two incidents of misconduct were alleged, the most obvious of which was the alteration of data on the security clearance form TBS-330-60E. The Board also found it disgraceful that Staff Sergeant Ray disclosed his intention to alter the form, because it would have given the clear impression to Ms. F., a member of the public, that the RCMP's hiring practices were anything but fair and impartial. Staff Sergeant Ray's actions reflected poorly on the organization. Allegation Seven was established.

### **SUBMISSIONS ON THE SANCTION**

[36] On December 9, 2011, counsel submitted a joint proposal by e-mail for a global sanction on the seven allegations of misconduct consisting of a reprimand, the forfeiture of ten days' pay, the demotion to the rank of Sergeant, a recommendation for continued counseling, and a recommendation for transfer. Of note, this latter recommendation was not included in counsel's later pleadings submitted on December 28, 2011, but the Board still considered it to form part of the joint submission on sanction.

[37] The AOR's written pleadings on sanction submitted electronically on December 28, 2011, contained victim impact statements from some of the women affected by the misconduct outlined in the ASF, attesting to a loss of faith in the RCMP as a result not only of the actions of Staff Sergeant Ray but also as a result of their displeasure with the process of investigating the allegations of misconduct and bringing them forward under Part IV of the *RCMP Act*.

[38] The aggravating factors mentioned by the AOR in his pleadings included the member's rank and his position as the NCO IC of the unit in which instances of misconduct occurred. Reference was also made to the serial, repetitive nature of the acts.

[39] The MR also submitted his pleadings electronically on December 28, 2011. By way of mitigation, the MR made explicit reference to the absence of prior discipline on the member's record, his willingness to admit the allegations and resolve them before a Board as quickly as possible, and the degree of remorse shown. A letter of apology was included in which Staff Sergeant Ray acknowledged the impact of his actions on the women involved, on his family, and on the Force. There were also several letters from former colleagues and supervisors in support of the member.

## DECISION ON THE SANCTION

[40] Counsel submitted many RCMP disciplinary cases which reinforced the Board's conviction that the range of sanction in serious cases such as the present one was fairly broad, from a reprimand and the forfeiture of several days' pay to dismissal, depending on the unique circumstances of each case. The joint proposal fell within that range of sanctions.

[41] The seven instances of misconduct describe a disturbing pattern of activity covering a period of years, involving inappropriate behaviour affecting a number of women who, in one way or another, were directly involved with Staff Sergeant Ray in his capacity either as a polygraph operator or as the NCO IC of a Behavioural Sciences Unit. The gravity of this misconduct in its totality is such that dismissal was in the forefront of the Board's collective mind. If not for the joint submission from counsel, dismissal or at the very least counsel's aforementioned sanctions plus the demotion to the rank of Corporal or Constable, would have been viable options.

[42] The Victim Impact Statements were particularly troubling, revealing wounds which on a personal and an institutional level will require some time and attention to heal. It will take considerable effort to rebuild the damaged trust in our organization, and the Board can only hope that its decision in this matter will prove to be an important step along that path.

[43] The gravity of the misconduct was such that little room was left for discussion of aggravating factors, but chief among them were the member's years of service and his rank. Staff Sergeant Ray should have known better. Our organization relies upon its senior NCOs to set a good example for younger members, and Staff Sergeant Ray's misconduct has had the opposite effect.

[44] The mitigating factors were numerous. By far the most compelling was the expression of confidence shown by the Appropriate Officer, who agreed to a proposal suggesting a sanction that fell short of dismissal. Doubtless, Staff Sergeant Ray's career record and contributions, some of which were attested to in the strong letters of support provided from subordinates, colleagues and supervisors stood him in good stead. Staff Sergeant Ray has continued support in the workplace. It has long been recognized as a principle of sanctioning professional misconduct, that many years of satisfactory service can be called upon as a mitigating factor in such circumstances, and the Board acknowledged that principle in this case.

[45] The Board also acknowledged Staff Sergeant Ray's sincere expressions of regret and remorse. Of considerable importance was his desire to admit the allegations at the first available opportunity, saving the Force the considerable time and expense of a contested hearing and sparing the victims from recounting their unfortunate experiences yet another time. It goes without saying that should similar misconduct occur, dismissal would be a very likely option for a future Board to consider.

[46] Having regard to all of the above, and especially to the joint submission of counsel, the Board imposed the following as a global sanction for the seven allegations of misconduct: a reprimand, the forfeiture of ten days' pay, a demotion to the rank of Sergeant, a recommendation for transfer, and a recommendation for continued counseling. The joint proposal by counsel submitted by e-mail on December 9, 2011, included a recommendation for transfer, but this recommendation was not included in their written pleadings submitted December 28, 2011. The Board recommends a transfer to a suitable position. In the Board's opinion, such a position should ideally be one which removes this member from working in the direct vicinity of the complainants and takes into account the potential (albeit limited, given the expert evidence) risk to other employees.

[47] This decision may be appealed by filing a statement of appeal with the Commissioner within the limitation period set out in subsection 45.14(4) of the *RCMP Act*.

**The Board's decision was delivered to the parties in electronic format on January 13, 2012. This is the written decision in the matter.**

Dated at Ottawa  
in the Province of Ontario  
on the 31st day of January 2012.



Inspector I.R. Knopp  
Chair, Adjudication Board

**I AGREE:**

Dated at Ottawa  
in the Province of Ontario  
on the 16 day of February 2012.

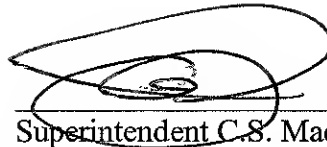
A handwritten signature in black ink, appearing to read 'P.A. Dowden', written over a horizontal line.

Superintendent P.A. Dowden  
Member, Adjudication Board



**I AGREE:**

Dated at Ottawa  
in the Province of Ontario  
on the 1 day of February 2012.

A handwritten signature in black ink, consisting of several loops and a final horizontal stroke, positioned above a horizontal line.

Superintendent C.S. MacMillan  
Member, Adjudication Board